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Summary of Stakeholders' submissions on the Republic of Congo*

Report of the Office of the United Nations High Commissioner for Human Rights

I. Background

1. The present report was prepared pursuant to Human Rights Council resolutions 5/1 and 16/21, taking into consideration the periodicity of the universal periodic review. It is a summary of eight stakeholders' submissions[1] to the universal periodic review, presented in a summarized manner owing to word-limit constraints.

II. Information provided by stakeholders

A. Scope of international obligations[2] and cooperation with international human rights mechanisms and bodies[3]

2. Centre for Global Nonkilling (CGNK) noted that there was no death penalty in Congo and, together with JS4[4], strongly encouraged the authorities of Congo, to ratify as soon as possible the Second Optional Protocol, aimed at the abolition of the death penalty, to the International Covenant on Civil and Political Rights.[5] Amnesty International (AI) made the same recommendation.[6]

3. CGNK noted that the Congo had signed the International Convention on the Protection of persons from all forms of Enforced Disappearance, but not yet ratified it. CGNK[7] and JS4[8] recommended the ratification of the International Convention on the Protection of All Persons from all forms of Enforced Disappearance as soon as possible.

4. JS4 recommended that Congo deposit without further delay the instrument of ratification of the Optional Protocol to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment.[9]

5. CGNK recommended that Congo ratify the Convention on the Prevention and Punishment of the Crime of Genocide within 2018.[10]

* The present document was not edited before being sent to United Nations translation services.

6. International Campaign to Abolish Nuclear Weapons (ICAN) recommended that Congo ratify the United Nations Treaty on the Prohibition of Nuclear Weapons, which had already been signed by Congo in 2017 as a matter of urgency.[11]

7. AI stated that Congo accepted, but had failed to implement several recommendations to align its domestic legal framework with international and regional human rights treaties to which it was a party, and to strengthen national systems for the promotion and protection of human rights. Since 2015, the human rights situation had deteriorated amid contestation against a constitutional review and contested presidential and local elections.[12]

B. National human rights framework[13]

8. JS4 recommended that Congo take the necessary measures to bring into conformity with the Paris principles the provisions of the new law on the National Commission on Human Rights, and strengthen the human rights protection component of the Commission.[14]

9. JS4 recommended that Congo facilitate the establishment of a National Mechanism for the Prevention of Torture in accordance with the provisions of the OPCAT.[15]

10. JS1 noted that there was a need to enhance mechanisms to ensure protection of the rights of the child. Even if the State had showed commitment through ratification of laws and establishment of national statutes, there still were lack of child protection intervention. The Working Group for Child Protection (WGTP), which was set up to bring together the public and private sectors for child protection, was still not operational.[16] The implementation by the Congolese State of a national child protection policy, through the adoption of ad hoc legislation, would contribute to considerably improve the living conditions of children, combat inequalities, and in the long term, to reduce exclusion and poverty.[17]

11. JS1 recommended that Congo create an early warning system and a National Observatory for the Protection of Children, as stipulated in Law No. 04-2010, on the protection of the child, in order to assess the effective implementation of the law and of the follow-up to the General Comments of the Committee on the Rights of the Child.[18]

12. JS1 recommended that Congo Implement the 2009 National Action Plan for People with Disabilities.[19]

13. Cultural Survival (CS) recommended that Congo create a national action plan on implementing the rights of indigenous peoples based on the World Conference on Indigenous Peoples' Outcome Document.[20]

C. Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Cross-cutting issues

Equality and non-discrimination[21]

14. JS3 stated that the 2015 Constitution did not include and provide a general prohibition of discrimination and did not guarantee the protection and promotion of the human rights of LGBTI.[22] Discrimination towards LGBTI was observed at the institutional level; there have been cases of harassment perpetuated by police officers and refusal of asylum to asylum seekers on the basis of sexual orientation and gender identity.[23] JS3 noted that article 127 of the Family Code defines marriage as an act of union established between a man and a woman, and article 56 of the same Code imposes the nullity of any marriage pronounced between two persons of the same sex.[24] According to JS3, Art. 127 of the Family Code and Art. 330 and Art. 331 of the Penal Code are frequently used as a pretext to socially condemn LGBTI persons.[25]

15. JS3 recommended repealing Art. 331 of the Criminal Code and criminalize with aggravated penalties acts of hatred and discrimination on the basis of sexual orientation and

gender identity[26]; encouraging implementation of training and awareness programs on issues related to LGBTI, especially in public institutions (hospitals, schools, public offices, main employers in the country and main trade unions).[27] JS3 also recommended including sexual education in curriculums, remove barriers to access to health care, establish legal clinics, medical care and psychological and social housing for those who are evicted from homes and in situation of danger and lastly, prohibit arrest or torture at the initiative of family or relatives.[28]

2. Civil and political rights

Right to life, liberty and security of person[29]

16. JS4 stated that owing to the recommendations of many delegations on the abolition of the death penalty in the second cycle of the UPR, the Congolese authorities resolved to abolish the death penalty by registering it in the new Constitution voted by referendum on 25 October 2015 and promulgated on 6 November 2015. JS4 recommended that Congo introduce a bill abolishing the death penalty in the National Assembly to remove any reference in the Penal Code and the Code of Criminal Procedure.[30]

17. JS4 reported that many cases of summary executions remained without serious investigations. There were strong allegations that law enforcement officers were responsible for most summary executions because of private justice or abuse of power. Authors of these crimes generally benefitted from the protection of their hierarchy.[31]

18. JS4 recommended prohibiting the incommunicado detention or detention of persons in unofficial places of detention and encouraged the police to better maintain their daily registries.[32]

19. JS4 recommended that Congo ensure that the perpetrators of such acts, including enforced disappearances, were sentenced to penalties commensurate with the gravity of those acts.[33]

20. AI reported that although Congo accepted recommendations to complete a review of legislative codes on preventing and punishing torture by 2014, and to establish a National Mechanism for the Prevention of Torture, these had not been implemented. Cases of torture in detention facilities continued to be reported and the authorities had not taken preventive steps nor investigated allegations of torture to bring suspected perpetrators to justice.[34]

21. AI recommended that Congo ensure that a definition of torture, in line with the Convention against Torture, is included in the Criminal Code and that torture and other ill-treatment are prohibited in all their forms;[35] allow all detainees, after their arrest and regularly during their detention, access to their families and lawyers of their choice, from the moment of arrest and throughout all judicial proceedings.[36] AI also recommended that Congo ensure that all detainees are examined by an independent doctor whenever needed;[37] effectively investigate all allegations of torture and other ill-treatment and bring suspected perpetrators to justice in fair trials and provide effective remedies and adequate reparations.[38] JS4 made similar recommendations.[39]

22. JS4 reported that custody (Garde à vue) was applied to the Directorate General of Territorial Surveillance (DGST). The suspects arrested by the DGST were frequently questioned, detained and tortured beyond the legal duration of police custody and without the minutes of their hearing being sent to their lawyers.[40]

23. JS2 recommended that the Congolese Government undertake to complete, by October 2018, the process of reforming the criminal and penal codes by incorporating torture as a distinct and imprescriptible crime in accordance with the principles set forth in international law and establish an independent national observatory on Torture by the end of 2018.[41]

Administration of justice, including impunity, and the rule of law[42]

24. JS4 recommended that Congo guarantee the independence of the judiciary and strengthen the capacity of the judicial staff and the powers of the inspectorate of the courts.[43]

25. JS2 informed that on 23 December 2017, a cease-fire and cessation of hostilities agreement in the Pool department was signed. JS2 recommended that the Government put in place a process of justice-truth-reconciliation for a lasting peace in the Pool Department and that, in order to do so, immediately establish an independent and impartial commission of inquiry to investigate all violations committed in the Pool department.[44]

26. AI recommended that Congo instruct the police, the army, the DGST and the gendarmerie, to refrain from detaining people without charge beyond the 72-hour period stipulated in Article 48 of the Criminal Code of Procedure.[45] AI also recommended that Congo allow independent national and international human rights monitors access to all detention centres, including DGST facilities.[46]

27. JS4 recommended that the Congolese authorities strengthen the control of places of detention carried out by the National Human Rights Commission; and facilitate the visits and control of the jails of the DGST by specialized NGOs.[47]

28. JS4 reported that pre-trial detention, which in principle should be an exceptional measure, had become the rule in the Republic of Congo, despite the existence of a number of legal provisions that govern it. Pre-trial detention was the primary cause of prison overcrowding.[48]

29. JS4 stated that the prison organization of the Republic of Congo was composed in most cases of dilapidated buildings dating from the colonial period. These poor conditions had already been the subject of recommendations in the previous UPR cycle. Since 2010, the Government had expressed its desire to modernize the prison system by initiating a reform on prison management. Unfortunately, the prisons that were to be built had never been or had remained unfinished.[49]

30. JS4 recommended that Congo diligent the construction of the new prisons, audit the work done by all the stakeholders in the construction projects; improve prison conditions, especially food, access to health care, sanitation and space, in particular by increasing the prison administration's budget and giving priority to alternative sentences to detention; improve the working conditions of prison staff, in terms of remuneration and training; and give new impetus to the computerization of the criminal justice chain.[50]

31. JS1 recommended that Congo examine living conditions in all prisons and detention facilities with a view to ensuring compliance with the Standard Minimum Rules for the Treatment of Prisoners, and in particular, that it reserve separate premises for the detention of minors.[51]

32. JS1 noted that according to Congolese law, the penalties for children's offences and crimes provided for were probation, placement in a reeducation center for minors and, exceptionally, detention in prison. In reality, the country did not have a rehabilitation center. All minors in conflict with the law were routinely placed in remand prisons, where they were usually placed in the same cells as adults. Sometimes, at best, they had a specific common cell.[52]

Fundamental freedoms and the right to participate in public and political life

33. AI noted that, although the Congolese Constitution guaranteed the right to attend and organize meetings, proceedings and peaceful protests, the right to freedom of expression, information and communication, and prohibited censorship, the authorities regularly violated these rights using national law provisions. The authorities relied on Law No. 21-2006 on political parties to arrest and detain political activists and members of opposition parties critical of their decisions on the grounds of "public disorder" or "undermining state security".[53] AI recommended that Congo refrain from misusing the criminal justice system to target peaceful assembly, including political and harass people simply for exercising their rights to freedom of expression, association and opposition members and journalists.[54]

34. AI reported that on 25 October 2015, ahead of protests organized by the opposition parties against the reform of the Constitution to allow the incumbent President to run for another term, the authorities shut down Internet and telecommunication networks for "security reasons" as well as the Radio France International broadcast signal in Brazzaville.

Similarly, on 20 and 21 March 2016, during the presidential elections, the authorities' shutdown Internet and telecommunications networks along with signal of some radio stations in Brazzaville.[55] AI recommended that Congo refrain from restricting telecommunication networks and access to Internet, including social media and messaging sites.[56]

35. AI was concerned about the arrest of several activists and opposition party members in 2015-2017, and about injury and death of protestors resulting from their participation in demonstrations.[57] At least 60 leading political figures had been arrested for opposing constitutional changes and protests related to the results of the presidential elections. Most of them remained in detention as of March 2018[58], for over two years without trial. JS2 stated that their detention was contrary to the Congolese Code of Criminal Procedure, which stated that pre-trial detention might not exceed four months and that it may not be extended for more than two months (Article 121). Their detention also violated Article 9 of the International Covenant on Civil and Political Rights.[59] AI recommended that Congo immediately and unconditionally release all prisoners arrested solely for peacefully exercising their rights to freedom of expression and assembly, and that amend Law No. 21-2016 on political parties to ensure its conformity with international human rights standards on the right to freedom of expression.[60]

36. JS2 stated that the contestation of electoral processes - 2015 referendum, 2016 presidential election - in the Republic of Congo has had, among other consequences, the imprisonment of political opponents, including two candidates for the presidential election. It was difficult to indicate the global number of political prisoners. The authorities deliberately restricted the work of NGOs in prisons and these resuictive measures continued to be conscientiously applied. Political opponents were prosecuted for undermining the internal security of the state and disturbing public order. The Congolese authorities have not only limited themselves to arbitrary arrests, but have gone so far as to torture some of opponents and inflict inhuman and degrading treatment.[61]

3. Economic, social and cultural rights

Right to health[62]

37. JS1 stated that the Child Protection Act No. 4-2010 prohibited the deprivation of care of a child because of financial considerations in subsidized hospitals (art.26 al.4) and provided for criminal sanctions, disciplinary and administrative matters (art.104). However, no health facility provided free childcare. The failure of the public health service was increasingly leading the population to turn to the private sector whose rates increase from year to year, or to the informal sector.[63]

38. CS recommended that Congo take steps to establish culturally appropriate health services, especially for gynaecological and obstetric care for indigenous women.[64]

Right to education[65]

39. JS1 stated that despite the law on education, which stipulates that "education is free during compulsory schooling, this free provision extends to school supplies", reportedly various fees were applied in the educational system.[66]

4. Rights of specific persons or groups

Children[67]

40. JS1 stated that the application of children's rights was declining in Congo, specifically in the areas of health, education and recreation. As a result, many children, at social, family and school level, did not have access to health, justice, education, housing and access to basic needs. The most vulnerable children, street children, girls and boys, excluded from any health care system, were unable to access care as guaranteed in Congolese law.[68]

41. JS1 indicated that many children continued to be victims of physical violence or corporal punishment. Although the Law on Child Protection prohibited corporal

punishment, this was still common practice in the society, including family, schools and justice institutions.[69] Violence, especially sexual violence against girls, remained a major problem.[70] Those responsible for violence against children remain unpunished. Access to justice remains a luxury for poor victims who fear the retaliation of their tormentors.[71]

42. JS1 reported that, although reliable data were not yet available, children in foster care, children accused of witchcraft, early marriages of girls, among other phenomena, continued to be a scourge with no sanction applied against the perpetrators of these violations.[72]

Persons with disabilities[73]

43. JS1 mentioned that there was a lack of statistics about disability issues, because Congolese society considered as curse, spell, divine punishment, the presence of a disabled child within the family. Parents easily moved beyond infanticide to maintain family unity and escape the taunts of the community. All of this contributed to the fact that children, when they were not killed during rituals, were subjected to mistreatment often leading to death, or were victims of confinement in houses, sheltered from sight or even from knowledge of other members of the community.[74]

Minorities and indigenous peoples[75]

44. Cultural Survival (CS) stated that most Pygmies have neither national identity cards nor birth registration. The result was lack of access to formal education and literacy training, and less employment opportunity leading to economic instability, discrimination and less political participation.[76] CS recommended that Congo facilitate the acquisition of birth certificates and identity cards for forest-dwelling communities.[77]

45. CS noted that indigenous and rural children were vulnerable to trafficking in the form of forced labour and sexual exploitation. Both forced labour and sexual trafficking are often linked to crime networks.[78]

46. CS stated that Pygmies also lacked access to health care, drinking water and were discriminated in accessing to other economic, social and cultural rights. Pygmies suffered from land eviction, displacement, forest grabbing by authorities and private companies with little to no prior and informed consent.[79] CS recommended that Congo: ensure that the free, prior, informed consent of indigenous communities is obtained before any project that may affect them;[80] ensure the inclusion and participation of indigenous peoples regarding conservation efforts;[81] increase access to linguistically and culturally appropriate education for Indigenous communities.[82]

Migrants, refugees, asylum seekers and internally displaced persons[83]

47. AI reported that between 2014 and 2015, Congo engaged in unlawful mass expulsions of non-nationals, including refugees and asylum seekers, during the operation "Mbata ya Mokolo" (*Slap of the Elders* in Lingala) carried out by police in cities nationwide. AI recommended that Congo promptly adopt comprehensive asylum legislation, recognising in particular the right not to be subjected to *refoulement*, in line with international law;[84] and ensure that a definition of discrimination, in line with international law, is included in the Criminal Code and that discrimination is prohibited in all its forms. AI also recommended that Congo provide all victims of crimes under international law and human rights violations committed during the operation "Mbata ya Mokolo" with full reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[85]

Notes

[1] The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org.
Civil society
Individual submissions:

AI	Amnesty International, London (United Kingdom);
CNGK	Centre for Global NonKilling, Honolulu, Hawaii (United States of America);
CS	Cultural Survival, Cambridge, Mass. (United States of America);
ICAN	International Campaign to Abolish Nuclear Weapons, Geneva (Switzerland);

Joint submissions:

JS1	**Joint submission 1 submitted by**: Apprentis d'Auteuil, REIPER (Réseau des intervenants sur le phénomène des enfants en rupture), Espace Jarrot, Caritas diocésaines de Brazzaville et Pointe-Noire, Foyer Père Anton, Handicap Afrique, Association de Solidarité Internationale, Paris (France);
JS2	**Joint submission 2 submitted by**: Observatoire Congolais des Droits de l'Homme, Cercle Uni des Droits de l'Homme et Culture de Paix, Brazzaville (Congo);
JS3	**Joint submission 3 submitted by**: Cœur Arc-en-Ciel, L'Association de Soutien aux Groupes Vulnérables, L'Organisation pour le Développement des Droits de l'Homme au Congo, Comptoir Juridique Junior, Brazzaville (Congo);
JS4	**Joint submission 4 submitted by**: Fédération internationale de l'Action des chrétiens pour l'abolition de la torture, Action des chrétiens pour l'abolition de la torture au Congo, Paris (France).

[2] The following abbreviations are used in UPR documents:

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination;
ICESCR	International Covenant on Economic, Social and Cultural Rights;
OP-ICESCR	Optional Protocol to ICESCR;
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP 1	Optional Protocol to ICCPR;
ICCPR-OP 2	Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty;
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women;
OP-CEDAW	Optional Protocol to CEDAW;
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
OP-CAT	Optional Protocol to CAT;
CRC	Convention on the Rights of the Child;
OP-CRC-AC	Optional Protocol to CRC on the involvement of children in armed conflict;
OP-CRC-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography;
OP-CRC-IC	Optional Protocol to CRC on a communications procedure;
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
CRPD	Convention on the Rights of Persons with Disabilities;
OP-CRPD	Optional Protocol to CRPD;
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance.

[3] For relevant recommendations see A/HRC//25/16, paras.111.1-19, 111.21-24, 111.26-28, 111.51, 111.66-67, 111.80, 111.73-77, 1112.1, and A/HRC/25/16/Add.1 113.1-3, 113.5-7.

[4] JS4, page 2.

[5] CGNK, p. 5.

[6] AI, page 6.

[7] CGNK, p. 5.

[8] JS4, page 3.

[9] JS4, page 8.

[10] CGNK, p. 4.

[11] ICAN, p. 1.

[12] AI, page 1.

[13] For relevant recommendations see A/HRC//25/16, paras. 111.25, 111.30-46, 111.48-50, 111.59,

111.84 and A/HRC//25/16/Add.1, para.113.4.
[14] JS4, page 11.
[15] JS4, page 8.
[16] JS1, page 2, pp. 2-3.
[17] JS1, page 4.
[18] JS1, page 10.
[19] JS1, page 10.
[20] CS, page 7.
[21] For relevant recommendations see A/HRC//25/16, 111.78, 114.1-2.
[22] JS3, pp. 20-23.
[23] JS3, pp. 31.
[24] JS3, para.24.
[25] JS3, pp. 26-26.4.
[26] JS3, pp. 32.
[27] JS3, pp. 32 letter f.
[28] JS3, page 6, pp. 32 letter g-k.
[29] For relevant recommendations see A/HRC//25/16, paras. 111.62, 111.71, 111.91-92, 111.105-110.
[30] JS4, page 1.
[31] JS4, page 2.
[32] JS4, page 3.
[33] JS4, page 3.
[34] AI, page 2.
[35] AI, page 6.
[36] AI, page 6.
[37] AI, page 6.
[38] AI, page 6.
[39] JS4, pages 7 and 9.
[40] JS4, pages 4 and 5.
[41] JS2, page 9.
[42] For relevant recommendations see A/HRC//25/16, paras. 111.20, 111.60, 111.111-115.
[43] JS4, page 10.
[44] JS2, page 10.
[45] AI, page 6.
[46] AI, page 6.
[47] JS4, page 5.
[48] JS4, page 5.
[49] JS4, pages 6 and 7.
[50] JS4, page 7.
[51] JS1, page 10.
[52] JS1, page 6.
[53] AI, page 2.
[54] AI, page 6.
[55] AI, page 4.
[56] AI, page 6.
[57] AI, page 4.
[58] AI, page 4 and 6.
[59] JS2, page 5.
[60] AI, page 6.
[61] JS2, page 6.
[62] For relevant recommendations see A/HRC//25/16, paras. 111.65, 111.130.132, 111.132.
[63] JS1, page 4.
[64] CS, page 7.
[65] For relevant recommendations see A/HRC//25/16, paras. 111.17-18, 111.52, 111.55, 111.57, 111.61, 111.71, 112.6-13, 112.14-16, 112.22.
[66] JS1, page 5.
[67] For relevant recommendations see A/HRC//25/16, paras. 111.117-119.
[68] JS1, page 5.
[69] JS1, page 4, pp. 13.
[70] JS1, page 4, pp. 14-15.
[71] JS1, page 4.
[72] JS1, page 6.
[73] For relevant recommendations see A/HRC//25/16, paras. 112.19-20, 112.29.

[74] JS1, page 8.
[75] For relevant recommendations see A/HRC//25/16, paras. 112.21.
[76] CS, page 2.
[77] CS, page 7.
[78] CS, page 5.
[79] CS, page. 2.
[80] CS, page 7.
[81] CS, page 7.
[82] CS, page 7.
[83] For relevant recommendations see A/HRC//25/16, paras.111.135-137.
[84] AI, page 7.
[85] AI, page 7.